

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF NEW JERSEY

4  
5 IN RE: VALSARTAN PRODUCTS  
6 LIABILITY LITIGATION

CIVIL ACTION NUMBER:

1:19-md-02875-RBK-JS

7 ORAL ARGUMENT AND RULINGS  
8 ON DISPUTES RAISED IN  
9 PARTIES' MAY 26, 2020  
10 LETTERS [DOCKET NOS. 439,  
11 440]  
12 (Via telephone)

13  
14 Wednesday, May 27, 2020  
15 Commencing at 11:00 a.m.

16  
17 B E F O R E:

THE HONORABLE JOEL SCHNEIDER,  
UNITED STATES MAGISTRATE JUDGE

18  
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1 (ALL PARTIES VIA TELEPHONE, May 27, 2020, 11:00  
2 a.m.)

3 THE COURT: We're on the record. This is the  
4 Valsartan MDL litigation, Docket No. 19-2875. The Court  
5 understands that there are in excess of 35 or so people on the  
6 phone. That's fine. The Court assumes only leadership  
7 counsel is going to speak. For the benefit of the court  
8 reporter, please state your name before you talk. We'll get  
9 their entries of appearance. If anyone else wants to speak,  
10 that's fine, just make sure you announce your name before you  
11 speak so the court reporter can take it down. But for  
12 purposes of the entries of appearance, why don't we just get  
13 leadership counsel to enter their appearances.

14 So start with plaintiff.

15 MR. SLATER: Good morning, Your Honor, Adam Slater  
16 for plaintiffs.

17 MR. NIGH: Good morning, Your Honor, Daniel Nigh for  
18 plaintiffs.

19 MS. WHITELEY: Conlee Whiteley on behalf of  
20 plaintiffs.

21 MR. HONIK: Good morning, Your Honor, Ruben Honik for  
22 plaintiffs.

23 THE COURT: And defendants.

24 MR. GOLDBERG: Good morning, Your Honor, this is Seth  
25 Goldberg from Duane Morris on behalf of the ZHP entities and

1 defendants.

2 MS. COHEN: Good morning, Your Honor, this is Lori  
3 Cohen with Greenberg Traurig on behalf of Teva and defendants,  
4 and also Miss Lockard, Victoria Lockard is on the phone as  
5 well, and she may be speaking on some topics as in the past  
6 conferences.

7 MR. TRISCHLER: Good morning, Your Honor, Clem  
8 Trischler on behalf of Mylan Pharmaceuticals.

9 MS. JOHNSTON: Good morning, Your Honor. This is  
10 Sarah Johnston on behalf of CVS Pharmacy and the retailer  
11 defendants.

12 MR. GEOPPINGER: Good morning, Your Honor, Jeff  
13 Geoppinger at Ulmer & Berne on behalf of AmerisourceBergen and  
14 the wholesaler defendants.

15 THE COURT: All right. I think that's all the  
16 leadership counsel.

17 Counsel, I received your letters. We have a meaty  
18 agenda for this morning's call. We'll get through it. We're  
19 on schedule for I think a two o'clock call with Judge Kugler.  
20 There might be some issues in the letters that we're not going  
21 to address on this call, we'll address this afternoon, but we  
22 can address any issues the parties want to raise.

23 With regards to the letters, I would suggest we start  
24 with the order in Mr. Slater's letter. I think that makes  
25 sense, and we'll go through the agenda in the order that

1 Mr. Slater set out. But, of course, if there's any issues  
2 that the parties want to raise on this call, they're free to.

3 So let's start with Mr. Slater's letter. The first  
4 issue is the Aurobindo, Hetero production issue. Of course,  
5 the Court has no objection to the agreed-upon date for the  
6 relevant discovery and I think the only issue is when  
7 Aurobindo is going to produce its documents and if they're  
8 going to do a rolling production. Is that right, Mr. Slater?

9 MR. SLATER: I think Ms. Hilton is going to address  
10 this one for us, Your Honor.

11 MS. HILTON: Good morning, Your Honor, Layne Hilton  
12 on behalf of plaintiffs. Yes, that is correct. We had, in  
13 the context of meeting and conferring about the beginning of  
14 the relevant start date, we had proposed to both Hetero and  
15 Aurobindo a completion date for core discovery on I think  
16 June 25th. Both Hetero and Aurobindo asked for July 31st  
17 deadlines for completion of core discovery, and with respect  
18 to Hetero, we were amenable to such a request because Hetero  
19 made additional commitments to produce rolling documents by  
20 the dates that we set forth in our letter.

21 There was an open issue with Aurobindo. We had a  
22 meet and confer with counsel on Friday and we had made a  
23 request that we could -- if we could receive some commitments  
24 of dates certain by which we could receive some portions of  
25 their core discovery, you know, we may be amenable to the

1 July 31st date. But absent some commitment, we were concerned  
2 that we would receive everything on July 31st, and that's sort  
3 of the only outstanding dispute if -- unlike with -- sorry --

4 THE COURT: Can I just ask a point of clarification,  
5 counsel? So it sounds like you have everything worked out  
6 with Hetero. Are they going to make a rolling production  
7 between whatever date it starts and July 31st? Is that what  
8 you agreed to?

9 MS. HILTON: Yes, Your Honor. And Hetero has  
10 actually, prior to even the commencement of the discussions  
11 with them about the relevant start date, Hetero had been  
12 producing core discovery, I believe, in April and in May. So  
13 we had already received some core discovery from them, and so  
14 I think the only -- and I'll let counsel for Hetero speak on  
15 that.

16 The only -- you know, we have some outstanding things  
17 that they had collected that are in line for production, but  
18 because we had agreed to a January 1st, 2011 start date for  
19 the relevant period, there were some additional documents they  
20 had to go back to their client and collect, and that was why  
21 they asked for a July 31st completion date.

22 THE COURT: So is it fair to state that at least with  
23 regard to Hetero, the parties have an agreement or  
24 understanding about the date documents are going to be  
25 produced, with a completion date of no later than July 31st?

1 MS. HILTON: Yes, Your Honor.

2 THE COURT: Okay. Aurobindo counsel, what say you?

3 MS. HEINZ: Good morning, Your Honor, this is Jessica  
4 Heinz for Aurobindo Limited. I had a good meet and confer  
5 with Layne Hilton. We discussed exactly what she said. We  
6 are open to a rolling production probably similar to what  
7 Hetero has agreed to. I just don't -- I'm waiting on  
8 confirmation from my clients about how soon we can get the  
9 documents that they've asked us to prioritize.

10 I was hoping I was going to hear from them before the  
11 conference today but I have not yet. So I'm still hopeful  
12 that we can agree to rolling production deadlines before  
13 July 31st and have that be the final deadline. Unfortunately,  
14 I haven't heard from them yet.

15 (Cross talk.)

16 THE COURT: Counsel, here's the Court's ruling. I  
17 have said in the past that Aurobindo, at least its related  
18 companies, as the Court understands it, has been aware of this  
19 litigation for months. It's been aware of the Court order  
20 regarding core discovery, and we're going to hold Aurobindo's  
21 feet to the fire. They knew about this conference, they had  
22 an opportunity to get in touch with you. I don't know why  
23 they didn't.

24 The Court's order is going to provide that Aurobindo  
25 has to provide a rolling production as of June 30th, July 15,



1 with a completion date of no later than July 31st, okay?

2 That's what the Court's order is going to say.

3 This has been going on too long. It's time to close  
4 this loop and it will be closed no later than July 31st.

5 Next issue.

6 MS. HEINZ: Thank you, Your Honor.

7 THE COURT: The API and Manufacturing Defendant Fact  
8 Sheets. Obviously, this is a meaty issue. And let's see if  
9 we can address it.

10 Not quite sure how to do it, but Mr. Slater, just  
11 globally, what -- I read the letter. Help the Court  
12 understand globally what the issue is. Is the issue that  
13 defendant doesn't want to answer these questions in the fact  
14 sheets because they say they're going to produce the documents  
15 and plaintiffs can get the information from the documents, and  
16 if so, what questions are we talking about so we can  
17 specifically address them.

18 MR. SLATER: Thank you, Your Honor. I'll just --  
19 I'll answer the global question then when we get into the  
20 specifics. Two other members of our executive committee will  
21 walk through the specifics if we have to get that done.  
22 That's really, as Your Honor frames it, the main holdup is  
23 that there were several questions where we're trying to trace  
24 the medications back or the drugs back to particular lots and  
25 batches which should be able to be done, and to be able to

1 figure certain information out, such as, you know, date of  
2 manufacture and things like that, which will help us for  
3 important product ID issues for the liability case. And  
4 really, we hope for this compromise to try to help you cut to  
5 the chase on this, to say, look, if you don't want to tell us  
6 exactly what the answer is, at least don't make us rustle  
7 through the entire forest to find out which tree answers this  
8 question, and we did a test case during the meet and confer  
9 where the defense sent a spreadsheet that would help to answer  
10 one of our requests, and we said, well, why don't we model  
11 this that way going forward so you at least tell us which  
12 spreadsheets or which documents the answers are in so that we  
13 save a lot of time, we don't risk having incomplete or  
14 inaccurate answers. And really, nobody is the worse for wear  
15 if we have certainty and we move through their efficient  
16 state.

17 We're not sure if the defense is accepting that  
18 because they haven't gotten back to us on the specific  
19 request, and we were hoping that was a good compromise.

20 THE COURT: One of the issues or problems that I'm  
21 wrestling with is I'm trying to understand how this fits with  
22 Paragraph 5 in the order the Court entered on January 28th,  
23 Docket No. 360. That particular paragraph was recited in  
24 defendant's letter where the Court took a middle ground about  
25 this product tracing issue.

1 I don't quite have my arms around how that  
2 Paragraph 5 relates to this fact sheet issue, if it does.

3 Are they apples and oranges or are they related?

4 (Cross talk)

5 MR. SLATER: I think it is, to some extent, apples to  
6 oranges, because again, we're not asking for a reproduction of  
7 anything. We're not asking for a duplicate production of  
8 anything. We're asking, through the DFS, as Your Honor is  
9 well aware, to link up on a case-specific level, specifics of  
10 a plaintiff's case and where the document production will be  
11 millions of pages, it makes a lot more sense for the parties  
12 to be on the same page as to which information specifically  
13 applies to a specific plaintiff.

14 THE COURT: Okay, I'm -- should the -- is the best  
15 way to approach this to look at the particular questions at  
16 issue? I'm still trying to --

17 MS. WALEKO: Your Honor, if I may, just one second,  
18 this is Alex Waleko of Duane Morris on behalf of the ZHP  
19 defendants. I'll be addressing this issue on behalf of the  
20 manufacturer defendants today. And I think possibly the most  
21 efficient way to get to this issue is if I could have a chance  
22 to explain what the manufacturer defendant has agreed to  
23 provide at this point in time and kind of describe what  
24 exactly what the dispute is, and then I do think it makes  
25 sense to go through these particular disputed questions and

1 the redlines that we attached to our filings, because they are  
2 the kind of specific issues about each of the questions.

3 THE COURT: Counsel, that's fine. I think that's a  
4 good idea, just to sort of -- to preface what we're going to  
5 talk about.

6 Are the questions at issue what you set out at Page 8  
7 of your letter, are those the questions at issue?

8 MS. WALEKO: Let me see what Page 8 says. Those  
9 are -- those are some of the questions that here we also  
10 attached a redline as Exhibit D. To start, I think it helps  
11 us to first explain the types of information that the  
12 manufacturer defendants had already agreed to provide.

13 The questions that are not currently in dispute,  
14 which are shown in Exhibit D and Exhibit E are the questions  
15 that go towards what we've been calling product identification  
16 information.

17 As Mr. Slater just mentioned, one point that's the  
18 main goal with this fact sheet is to try to trace the  
19 individual pills that each plaintiff received upward through  
20 the supply chain all the way down to the specific batch of  
21 APIs that ended up in that plaintiff's pill.

22 And to do that, the manufacturers have agreed to  
23 provide product identification information and that is  
24 information such as the lot and batch number for the Valsartan  
25 -- the date of manufacture, the date of sale, the customer,

1 the date of expiration, et cetera, that type of data that  
2 would facilitate plaintiffs in their goal of trying to trace  
3 that product through the supply chain to identify who are the  
4 relevant defendants, who manufactured this product, and --

5 THE COURT: Okay. Counsel, could I ask for some  
6 clarification here?

7 So you've said you're going to identify -- well, the  
8 defendants are going to identify the lot, batch number,  
9 customer. Does that -- in the first instance, are you talking  
10 about the plaintiff has to identify for you some initial  
11 information for you to provide that information?

12 MS. WALEKO: Yes. That's been plaintiff's plan and  
13 -- with the way that the supply chain works in the generic  
14 drug market, the idea is that plaintiff currently proposed  
15 four fact sheets directed toward the four different levels of  
16 the supply chain. So one towards the retailers, one to the  
17 wholesalers and then one to the finished dose and API  
18 manufacturers, one to each of them, respectively.

19 And the idea is that the retailers will start with  
20 the information provided in the Plaintiff Fact Sheet and the  
21 retailers will respond to their own Defendant Fact Sheet and  
22 then the wholesalers will go next and they'll use, you know,  
23 that cumulative information and then answer their own fact  
24 sheets and so on up the supply chain for the API  
25 manufacturers, with the idea being that obviously the API

1 manufacturers have no way to tell independently on their own  
2 which specific consumer in the United States received API from  
3 which particular batch. The idea is to trace this information  
4 up the supply chain. So the caveat being --

5 THE COURT: Okay, so -- can I stop you there,  
6 Counsel? Get back to a question I asked.

7 Are we talking about the individual/plaintiffs who  
8 are going to be identified pursuant to Paragraph 5 of that  
9 order I mentioned?

10 MS. WALEKO: Yes, yes.

11 THE COURT: Okay. So there is a relationship between  
12 Paragraph 5 and the fact sheet then, right?

13 MS. WALEKO: There is. And, Your Honor, going back  
14 to Paragraph 5 of the fact sheet. This dispute about the  
15 appropriate scope of the fact sheet, you know, it goes all the  
16 way back to January before the Court issued that ruling. So,  
17 you know, this might sound like somewhat of a similar dispute  
18 and that's because this is the argument at that January case  
19 management conference.

20 The Court already heard this issue and the Court, you  
21 know, decided it and whether it is the Defendant Fact Sheet to  
22 this product identification information.

23 THE COURT: Okay. So in the first instance, there's,  
24 what, how many people, approximately, are going to be  
25 identified in Paragraph 5, about 40 plus or minus are we

1 talking about?

2 MS. WALEKO: I think -- my understanding of the total  
3 of Paragraph 5 would come to 54 plaintiffs because it is the  
4 class representatives of which I believe there are 24 economic  
5 loss and 10 medical monitoring and then Paragraph 5 also  
6 allows 20 personal injury plaintiffs.

7 So 24, 10 and 20 is 54.

8 And one point on that I did want to mention that I  
9 think it is very critical context for why the manufacturers  
10 are so concerned about --

11 THE COURT: Hold on. Hold on, Counsel. Before we  
12 get to arguments, please let me understand the whole  
13 background, okay, because it will help me understand your  
14 argument.

15 Now we have 54 plaintiffs and pursuant to the order,  
16 these 54 plaintiffs are going to produce, in my words, every  
17 piece of paper they have regarding the Valsartan, et cetera,  
18 prescriptions they got, right? Whatever product ID  
19 information they have is going to be produced to the  
20 defendants, right?

21 MS. WALEKO: Correct.

22 THE COURT: All right. In the first instance, the  
23 retailer is going to answer -- well, who answers first, the  
24 retailer defendant?

25 MS. WALEKO: That is my understanding of the plan,

1 Your Honor.

2 THE COURT: Okay. Retailer defendants answer as to  
3 these 54 people and then it goes up the supply chain  
4 eventually to the finished dose manufacturers and the API  
5 manufacturers, right?

6 MS. WALEKO: Correct.

7 THE COURT: And what plaintiff is looking for is  
8 whatever traceability information the manufacturers have that  
9 relate to the product that these particular plaintiffs got  
10 from, say, Walgreens or a Walmart, right?

11 MS. WALEKO: Correct.

12 THE COURT: Okay. So at least with regard to the  
13 product ID traceability information we're talking about, we're  
14 talking about the manufacturers only, quote unquote, my words,  
15 only have to address at least in this initial stage,  
16 hopefully, information just for these 54 people, right?

17 MS. WALEKO: Yes, and there is -- I would like to add  
18 some context to that.

19 THE COURT: Okay. Now I'm going to turn the floor  
20 over to you. You explain the defendants' position and now I  
21 can better understand your argument.

22 MS. WALEKO: Sure. Thank you, Your Honor.

23 So as I mentioned, the manufacturers have agreed to  
24 provide that type of product identification information that  
25 would allow the plaintiff to trace their product to the supply



1 chain. And I think one extra point about these 54 plaintiffs  
2 and doing this exercise is that it's important to remember  
3 that for most of these plaintiffs, they receive Valsartan many  
4 times over a period of years. So we're seeing a lot of  
5 plaintiffs who received a refill on their prescription every  
6 30 to 90 days over many years. So for each of these  
7 plaintiffs, they've probably received several hundred bottles  
8 of Valsartan and this product identification exercise would  
9 have to be performed for each of those bottles to confirm  
10 where did they come from, et cetera.

11 And so even though the world of plaintiffs has been  
12 annexed at this point to 54 plaintiffs, this will be quite a  
13 burden of exercise that the manufacturers have already agreed  
14 to engage in and have agreed to answer questions in the fact  
15 sheet.

16 Now, where the dispute is --

17 THE COURT: Can I ask you a question, Counsel?

18 MS. WALEKO: Sure.

19 THE COURT: In order for your clients to try and  
20 attempt to do this traceability analysis, will you be getting  
21 the information you need? In other words, if you get a batch  
22 number, you know, some sort of number from the retailer up the  
23 food chain, can your client then trace it to a particular  
24 batch, when it was made, where it was made?

25 MS. WALEKO: That is -- I think there are two --

1 really two questions there. The first and easier question is,  
2 if we, if we as the manufacturers deal with these, the lot and  
3 batch number from the wholesaler or the retailer, then yes, we  
4 can provide additional information. If we have the lot or  
5 batch number, we can answer questions about when that lot or  
6 batch was manufactured, to whom it was sold, the expiration  
7 date, the date of sale, et cetera.

8           However, the main question, though, is can the  
9 manufacturers or retailers provide that lot or batch number  
10 information to the manufacturers, and my understanding is that  
11 the Wholesaler and the Retailer Fact Sheets are still under  
12 negotiation. I think this is an issue that's going to come up  
13 or has come up in their macro discovery briefing that's not  
14 been completed yet.

15           But my understanding is that the industry does not  
16 track lot and batch number in this way, and so the  
17 manufacturers have agreed to provide this information and have  
18 continued their good faith negotiations about what the scope  
19 of their Manufacturer Defendant Fact Sheet should be.

20           But this product tracing project may ultimately prove  
21 quite difficult, if not impossible. And so that is one of the  
22 issues as to that case.

23           THE COURT: Two questions for you. In order for your  
24 clients, the finished dose and the API manufacturers, to  
25 provide the traceability information that plaintiffs are

1 looking for, what is the absolute minimum information you must  
2 -- your clients must have to do the search? Is it a lot or  
3 batch number? Is it something else? And clearly, if that  
4 information is not provided to your client, can't your client  
5 just say, we can't do it?

6 MS. WALEKO: It is -- I believe that we cannot answer  
7 both of these questions without receiving the lot and batch  
8 number from responses and other areas, other Defendant Fact  
9 Sheets. And that is actually why -- we have designed the fact  
10 sheets so that we do answer right off the bat, yes/no whether  
11 the manufacturers are able to identify the lot and batch  
12 number based on the information that they have received, and  
13 plaintiffs have agreed to those questions.

14 And, I mean, just for more context, the reason that  
15 this product tracing becomes so complicated is based on the  
16 records I've seen from the ZHP defendants, ZHP manufactures  
17 multiple batches and multiple lots per day and sells to many  
18 customers, and so without that type of precise lot and batch  
19 information, it honestly -- it does become really complicated  
20 and product identification could be a hole that is very  
21 difficult for the plaintiffs in this case.

22 THE COURT: It seems to me that this is a pretty  
23 critical area and I'm querying you whether you said you think  
24 the lot and batch number is the minimum information you need.

25 Have you rolled up your sleeves with your clients

1 under the difficult circumstances we're all working with to  
2 give a definitive answer to the Court and the plaintiffs that  
3 at an absolute minimum, no question about it, unless we have  
4 the lot and batch number, we can't give you what you want?  
5 Are you prepared to make that representation to the Court and  
6 to the plaintiffs?

7 MS. WALEKO: Yes, Your Honor. My conversations with  
8 our client, their level of visibility then goes down to when  
9 they sell a batch of API to another client like Teva or  
10 Torrent, they don't even know that that's a big guide in use  
11 in the United States market. That's really where their  
12 visibility ends. So without lot and batch information, at the  
13 very least -- I mean, I think it is impossible for defendants  
14 to provide this type of plaintiff-specific, this is the pill  
15 that ended up in this plaintiff's hands in New Jersey  
16 information.

17 THE COURT: Okay. So, I interrupted you. If you  
18 want to continue, Counsel.

19 MS. WALEKO: Sure. I think I was just getting to  
20 framing where the real dispute is, because I mentioned we have  
21 agreed to provide and answer these product identification  
22 questions, to the extent we're able to, from the information  
23 we've received, from the supply chain and plaintiff.

24 The dispute here is that plaintiff wants the  
25 defendant actually to go beyond these product identification

1 questions and also requires the manufacturer to then review  
2 their own productions and identify other categories and other  
3 specific documents that are potentially relevant to that  
4 plaintiffs' case.

5           So, for example, the manufacturers have agreed to  
6 identify, say, the, you know -- the manufacturers have agreed  
7 to provide the product's identification information. Once  
8 they just have that information, they can go and find --  
9 review those testing results that the manufacturers produced  
10 and identify the particular tests that they believe relates to  
11 their case, and the object of this dispute is what the  
12 manufacturers maintain that the fact sheets should be limited  
13 to product identification which, as Your Honor mentioned, is a  
14 critical issue and it will be a very burdensome and difficult  
15 issue for the manufacturers and all of their defendants, but  
16 truthfully, the Defendant Fact Sheet that the manufacturers  
17 have agreed to is already going to be a time-consuming  
18 process.

19           And then beyond product identification, we believe  
20 that it's plaintiffs' burden to look through the documents,  
21 identify what they believe is relevant to their case,  
22 especially because once they have this product identification  
23 information, they are equally able to sort through the  
24 productions and find the specific documents that they're  
25 interested in.

1           And I think, getting back to Your Honor's question  
2 about Paragraph 5 of the January 28th order, and if this  
3 probably sounds familiar and it's because it was the same  
4 dispute that was at issue in January, and it is our position  
5 that the Court has already ruled on this and at that time, the  
6 manufacturers had actually asked the Court to forego the fact  
7 sheet entirely, because all of this information that  
8 plaintiffs are requesting, including the information  
9 visibility necessary to trace product and show product ID  
10 would be available to plaintiffs in the documents that the  
11 manufacturers are producing.

12           THE COURT: Okay. Can I stop you there, Counsel?

13           MS. WALEKO: Sure.

14           THE COURT: Because maybe we ought to get into the  
15 specific questions at issue, but let me take in your letter,  
16 Mr. Slater's letter, what seems to me to be the clearest  
17 issue, and I'm referring to Page 6, Section D.

18           Defendants want to know the date of the recall  
19 notices, right? I could be wrong, but I would suspect that  
20 your clients can press a button and get a printout of that  
21 very easily. I'm getting the impression from the plaintiffs  
22 that your clients are going to produce thousands if not  
23 millions of documents and you want them to look through those  
24 documents to pick out the recall notices and to prepare charts  
25 of the dates. To me, that makes no sense.

1           So let's use that as an example. Let's just use the  
2 recall notices as an example of -- bless you.

3           Plaintiffs want to know the date you sent the recall  
4 notices. What's so hard about that? What's wrong with that?

5           MS. WALEKO: Sure, Your Honor. Well, the finalized  
6 recall notices first -- that were finalized in conjunction  
7 with the FDA, they have already been produced through core  
8 discovery and the plaintiffs have that information, they know  
9 the date at which each defendant announced their voluntary  
10 recall. That is also information that's available on the  
11 FDA's website. And it's available, historically, too, so  
12 plaintiffs can see the date that that recall first announced  
13 and had been updated.

14           THE COURT: Let me ask you a question. One of the  
15 disputes that we're going to get to later on this call is  
16 defendants want plaintiffs to list their medical expenses.  
17 What's the difference? Plaintiffs say, we produced the  
18 medical bills. You can find out for yourself what the  
19 expenses are. What's the difference between that issue where  
20 the defendants want the plaintiffs to list their medical  
21 expenses and here, the plaintiffs want the defendants to list  
22 the dates of the recall notices; what's the difference?

23           MS. WALEKO: Sure, Your Honor, I think there are two  
24 differences. One that's more legal and one that's more  
25 practical. The first difference is that we're requiring the

1 plaintiffs to tally up their medical expenses. That's  
2 consistent with the plaintiff's obligation in every case to do  
3 a calculation of the damages that they're seeking, and then  
4 second, from a more practical standpoint or an efficiency  
5 standpoint, I think there's obviously a difference to having  
6 each individual plaintiff type up, you know, calculate the  
7 damages they're seeking and provide that information in a --  
8 in a, you know, in one spot, versus having the same small  
9 group of defendants to answer the same question not just 54  
10 times, but potentially, you know, 250 times because they have  
11 to do it 42 times per plaintiff. And so it's kind of a  
12 question of where is the most efficient place to allocate that  
13 burden, given the nature of these cases and the types of  
14 questions that are being asked.

15 THE COURT: Counsel, I'll give you an A-plus for a  
16 valiant try, but in the Court's view, there's absolutely no  
17 difference between what the defendants are asking the  
18 plaintiffs to do and what, at least as to this one example,  
19 and what the plaintiffs are asking the defendants to do.

20 Anyway, what's the best way to proceed now? Do we go  
21 to the particular questions at issue?

22 MS. WALEKO: I think so, Your Honor. I think it  
23 makes sense for everyone to look at Exhibit D to the  
24 defendant's filing because there are some unique issues, and  
25 if the Court is inclined to order that the defendants actually



1 can include from it the disputed questions, there are some  
2 specific issues with each question as to the wording that  
3 might be changed, and I also think, you know, maybe the  
4 question that the dates of the recall notices might be -- it  
5 has a different burden than some of the other questions that  
6 are in dispute.

7 THE COURT: I picked the easiest example. I have --  
8 I have Exhibit D and E in front of me.

9 Could we address E first? I defer to you.

10 MS. WALEKO: Sure, Your Honor. I think, I think  
11 Exhibit E makes sense because the finished dose manufacturer  
12 version is almost identical except it has a couple of extra  
13 questions in it.

14 THE COURT: Okay. Let's go one by one. We'll hear  
15 your argument, we'll hear Mr. Slater's argument and we'll get  
16 a ruling.

17 MS. WALEKO: Sure. The first redline that you'll see  
18 on the first page of Exhibit E is about the time to respond.

19 THE COURT: Let me just -- oh, 90 days. Let's save  
20 that. Let's deal with the substantive issue. We'll deal with  
21 the timing issue later.

22 MS. WALEKO: Okay. Then the next issue on the second  
23 page of Exhibit E as we go through these levels on the side,  
24 the first question is asking the defendants to identify the  
25 nitrosamine testing performed on the accepted API, and this is

1 -- again, this is an example of the type of information that  
2 is equally available to plaintiffs once they have the product  
3 identification information and the type of information that  
4 becomes, you know, an unfair burden on the defendant to kind  
5 of -- to respond to the same question multiple times for  
6 plaintiff and over and over again on -- ultimately, it is  
7 plaintiff's burden to prove their own case and to find these  
8 documents.

9 THE COURT: Let me just hear from Mr. Slater. So I  
10 just want to make sure. With regards to this particular  
11 question, we're only, in my words, "only" referring to the  
12 information that the 54 plaintiffs were going to provide. Is  
13 that right?

14 MS. WALEKO: Yes.

15 THE COURT: Okay. So before we turn it over to  
16 Mr. Slater, in the normal course of things, when a defendant  
17 produces documents, if this Court asks all plaintiffs, I don't  
18 mean to limit it to defendants, defendant or plaintiffs, to  
19 require the parties to identify the responsive Bates numbers  
20 to the request. So if the Court did that for this question,  
21 it would effectively be the same, wouldn't it?

22 MS. WALEKO: I'm sorry, Your Honor, I don't think I  
23 fully understood what that question was.

24 THE COURT: If I understand the issue right, and I'm  
25 making this up. Plaintiffs are going to -- I'm sorry,

1 defendants are going to produce, I'm picking a number, 200,000  
2 testing documents, okay? Not all of those -- some of those  
3 but not all of those relate to the products of the 54  
4 plaintiffs. Defendants want plaintiffs to go through those  
5 200,000 documents to identify the testing relevant to the 54  
6 plaintiffs. Is that right?

7 MS. WALEKO: That's right, Your Honor, and I think  
8 this is an excellent example, too, of the benefit that  
9 plaintiffs received 200,000 test results, and I think that  
10 might be high. ZHP, for example, has manufactured about a  
11 thousand batches of Valsartan API under its --

12 THE COURT: No, I said documents.

13 (Cross talk.)

14 MS. WALEKO: So that was -- the plaintiffs would like  
15 the defendants to go through for each lot or batch that the  
16 plaintiffs received and it might be 30 different lots or  
17 batches over the course of several years that they took the  
18 drug and pinpoint each testing result that that -- that  
19 applied to that plaintiff product.

20 And I think that's a great illustration of how it  
21 burdensome it is for the defendants to answer even one of  
22 these fact sheets because if you remember that at the same  
23 time, you know, defendants have to be focusing on working up  
24 their own defenses and working up their own cases, and what  
25 this type of question is doing is shifting the burden of

1 finding the relevant documents and proving plaintiff's case to  
2 the defendant, and it's something that's going to be  
3 incredibly difficult, especially with the pace that the Court  
4 wants to get these cases resolved.

5 THE COURT: I want to -- before I turn it over to  
6 Mr. Slater, I just want to make sure I got it right.

7 Hypothetically, I'm making this up, there's 200,000  
8 pages of documents regarding testing that the defendants have  
9 done. That's all the -- that's the universe of testing  
10 documents. Some of those 200,000 documents relate to the 54  
11 plaintiffs, but not all of them.

12 Defendants' position is that the plaintiffs should  
13 look through those 200,000 documents to try and find the  
14 documents that relate to the 54 plaintiffs that we're  
15 concerned about. Is that what the defendants' position is?

16 MS. WALEKO: Yes.

17 THE COURT: Okay. Mr. Slater, let's hear from you.

18 MR. SLATER: Judge, as they do in the Congress, I'm  
19 going to give up my time to Ms. Goldenberg and Mr. Williamson  
20 on our executive --

21 (Court reporter asks counsel to repeat.)

22 MR. SLATER: I'm handing off, Your Honor, to  
23 Ms. Goldenberg and Mr. Williamson who are prepared to argue  
24 the specific points here, so I don't want to -- it's their  
25 issue, so I'm going to hand off to them, if that's okay.

1 THE COURT: Sure.

2 MS. GOLDENBERG: Your Honor, this is Marlene  
3 Goldenberg. Good morning. And I think, you know, you kind of  
4 hit the nail on the head. We're not asking them to itemize a  
5 number of things for us. We're really just looking for them  
6 to go to plaintiffs, the right place. You know, if these  
7 documents have been produced, then that's it, it makes their  
8 job a lot easier and they can just give us a base number, but  
9 it's not always clear, you know, which document relates to  
10 which batch, and to ask us to just jump in and guess at that,  
11 it's really a waste of our time when we are trying to be  
12 efficient and move towards trial specifically.

13 So if we're able to just resolve this quickly by  
14 having the defendant say, here's where you get this  
15 information and it's only for 54 plaintiffs, that seems like a  
16 reasonable compromise for both sides.

17 THE COURT: The first issue we're dealing with,  
18 Ms. Goldenberg, is Roman Numeral II, capital D on Page 2 of  
19 Exhibit E.

20 Does that particular question relate to this issue  
21 that we're -- we've been talking about for the past few  
22 minutes?

23 MS. GOLDENBERG: And I just want to make sure I'm in  
24 the same place as you, Your Honor. Exhibit E, Section II,  
25 Sub D as in dog, is that right?

1 THE COURT: Yes. That's the same issue we've been  
2 dealing with.

3 MS. GOLDENBERG: Right.

4 MR. SLATER: Marlene, it's Section B actually.

5 THE COURT: No, it's Roman Numeral II, capital D.  
6 I'm in the redline version, Exhibit E.

7 MR. SLATER: I apologize, Your Honor.

8 THE COURT: D as in dog.

9 MS. GOLDENBERG: Yes. I think the short answer, Your  
10 Honor, is that your section is yes, it all relates to what we  
11 were just talking to. It's our understanding, especially with  
12 the defendants being in the superior place of knowledge of  
13 understanding how this works and where the testing was done,  
14 you know, if this were an individual case, we could just order  
15 an interrogatory or a request for production and they would be  
16 required to identify these documents by Bates number.

17 So I don't think that we're adding any additional  
18 burden to what would normally be expected in a litigation.

19 THE COURT: The Court's ruling on this issue is that  
20 the defendants' objection is overruled. The Court struck a  
21 compromise between the party's respective positions when it  
22 limited the number of, in my words, traceability analysis that  
23 had to be done. We started with apparently the number 54 now,  
24 which is a fair compromise, given the scope of the case.

25 The defendants haven't established that this would be

1 an undue burden, and in the normal course of things when  
2 defendants produce documents, voluminous documents, which they  
3 undoubtedly will in this case, it's this Court's practice and  
4 I think it's in accordance with the case law, to require  
5 parties to identify the Bates numbers of the particular  
6 documents that are responsive to a particular request.

7 So there would be no additional burden by, in the  
8 Court's view, having the defendants respond to the particular  
9 inquiry as an issue.

10 So the objection to Roman Numeral II, D, Page 2, as  
11 we just argued, is overruled.

12 Next issue, defendant.

13 MS. WALEKO: So, this next -- the next redline on  
14 this page actually I think -- I think there might not be a  
15 dispute about this one or -- this one question asks for the  
16 date of manufacture two times, and so the defendants deleted  
17 the second time it asked for it. But I'll let Ms. Goldenberg  
18 clarify, if that's okay.

19 MS. GOLDENBERG: As long as you did it once, we're  
20 fine.

21 MS. WALEKO: Yes.

22 Okay. So I believe the next disputed issue is on the  
23 third page of this exhibit. And unfortunately, it looks like  
24 we deleted several sections and they got lumped into a single  
25 comment bubble here.

1           So, Your Honor, the first question here, if you read  
2           that comment bubble, it says: "Identify the data you collect  
3           and store as part of electronic data interchange 867  
4           charge-back report."

5           (Cross talk.)

6           MS. WALEKO: That is -- my understanding is that it  
7           is -- that it is an electronic platform used that some  
8           companies may use to handle purchase orders and charge back  
9           other transactional data, and our position on this question is  
10          a little different than what we had been arguing for the past  
11          few minutes.

12          Although plaintiffs try to phrase this question as  
13          something plaintiff-specific, we get data fields and a type of  
14          data stored through this electronic data interchange is not a  
15          plaintiff-specific question and it is an issue that is being  
16          handled and should be handled through the meet and confers  
17          regarding sales and pricing information.

18          In fact, the original document request that the  
19          plaintiffs served on the manufacturers requested similar data  
20          fields and charge-back reports. Those were formerly Request  
21          No. 109 and 111 and plaintiff withdrew those requests before  
22          the requests were finalized by the Court, and so our position  
23          is that this information is more appropriately handled through  
24          the sales and pricing negotiations and also specifically  
25          withdrawn from the frontline document requests, and those



1 should be handled through those ongoing meet and confers about  
2 the types of sales and pricing information that the plaintiffs  
3 need on a global basis.

4 THE COURT: Plaintiff?

5 MS. GOLDENBERG: This is Marlene Goldenberg. I was  
6 going to popcorn to Layne Hilton or Dave Stanoch on this one.

7 THE COURT: You're going to have to hurry up and talk  
8 before the Court --

9 MS. HILTON: Your Honor, Layne Hilton on behalf of  
10 plaintiff. I haven't looked at this but, you know, my  
11 understanding is we are in the process of meeting and  
12 conferring on the global sales and pricing data. And so to  
13 the extent that the request is something that defendants  
14 intend to negotiate with us on an aggregate basis in a good  
15 faith manner, I think, you know, we are amenable to that.

16 But as will be discussed later on, I guess in the  
17 hearing, you know, we have some general issues with the sales  
18 and data production and so, you know, with the proviso that  
19 whatever the Court decides or rules on with respect to the  
20 aggregate sales and data production, you know, I think we are  
21 open to having those meet and confers.

22 THE COURT: Objection sustained on the defendants.

23 This should not be included in the fact sheet but  
24 we'll reserve the discussion of this particular issue when we  
25 get to the sales and pricing discussion.

1 Defendant, next issue.

2 MS. WALEKO: Sure. The next question, Your Honor, is  
3 a little past that little paragraph symbol in the bubble and  
4 it starts with: "State whether you supplied each test result  
5 identified in response to Question II(B) for the FDA to any  
6 other entity or person, et cetera."

7 I think this question initially fell within the  
8 defendants' position that this is the type of information that  
9 plaintiffs are equally capable of identifying, but  
10 understanding that Your Honor has overruled that objection, I  
11 think there are parts of the language here that need to be  
12 changed.

13 One, is that it says: "To any other entity or  
14 person, e.g., your actual or prospective customers or  
15 defendants." We maintain that that should be edited to say:  
16 "Your actual customers or defendants."

17 THE COURT: "Prospective customers" is certainly an  
18 overbroad term that really doesn't belong in these fact  
19 sheets.

20 That could be anybody, right?

21 MS. WALEKO: Yes, and it's overbroad and it's vague  
22 so we do think it should be limited to "actual customers or  
23 other defendants," to the extent that their not just one and  
24 the same.

25 THE COURT: Agreed. Agreed. Aside from that, is

1 there any -- knowing the Court's ruling previously, is there  
2 any other objection to this particular question?

3 MS. WALEKO: Not for that particular question, Your  
4 Honor.

5 THE COURT: Okay. The next question is: "The dates  
6 of the recall notices." Can you tell the Court why this  
7 should not be included, other than you think plaintiffs should  
8 look through defendants' documents, the documents that the  
9 defendants are going to produce, because the Court is inclined  
10 just to order the defendants to produce this because it's just  
11 so easy.

12 MS. WALEKO: Sure, Your Honor, that was our objection  
13 to this question. So I understand the Court's ruling on that.

14 THE COURT: Objection overruled as to the recall  
15 objection.

16 Next question is: "Identify all drugs to have  
17 recalled or otherwise identify it as actually or potentially  
18 contaminated."

19 I mean, don't we know what drugs have been recalled?  
20 Isn't that basic information everybody knows?

21 MS. WALEKO: Well, Your Honor, our position on this  
22 question is it is actually duplicative of several of the other  
23 questions of the Defendants' Fact Sheet. So the other  
24 questions -- you know, the question right before it says:  
25 "Provide the date on which you sent the recall notice that

1 apply to any of the affected drugs," meaning the drugs that  
2 this plaintiff took. So that question already answers whether  
3 the affected drug was recalled, and similarly, the second half  
4 of Section F, defendants should identify if the drugs were,  
5 quote, actually or potentially contaminated. And that's  
6 answered by the identification of the testing information. I  
7 think the testing results speak for themselves, and there  
8 would be, you know, what constitutes, quote, contamination in  
9 terms of -- it's a disputed issue in this case and so, the  
10 defendants' burden at most should be to identify those testing  
11 results, not to take a stance on what contamination means.

12 And I'll also note that the plaintiffs did agree to  
13 delete this question from the API's Defendant Fact Sheet, but  
14 it is still in the finished dose one.

15 THE COURT: Plaintiff, do we have a dispute about  
16 this?

17 MS. GOLDENBERG: Your Honor, I think that we can  
18 probably work to merge the information into another question  
19 so that we don't have anything that's duplicative. But, from  
20 our standpoint, it's our understanding that they haven't  
21 tested every batch. So what we're looking for here is their  
22 knowledge about whether or not a particular batch was  
23 contaminated or was not, and that's going to be an important  
24 issue for us later, if they're going to take a position that  
25 only some of this was affected. It would be important for us

1 to know if that's going to be their position early on.

2 But, if their position is that if something is  
3 recalled, then it is probably contaminated, I think we can  
4 live with that and we can merge that into another question.

5 (Cross talk.)

6 THE COURT: I don't want to take the wind out of your  
7 sails, defendants, but the defendants have made their position  
8 clear throughout the course of this litigation, so there's no  
9 need for you to repeat what you already stated a thousand  
10 times.

11 MS. WALEKO: Thank you, Your Honor.

12 THE COURT: This question: "Identify all affected  
13 drugs that you have recalled or otherwise identified as  
14 actually or potentially contaminated."

15 I mean, everybody knows what drugs have been  
16 recalled, so I don't see why that has to be answered again,  
17 and "actually or potentially contaminated" is just too broad.

18 Objection sustained.

19 Let's go to the next question: "Were any drugs  
20 returned to your possession as a result of a recall letter."

21 Plaintiff, what are you getting at here?

22 MS. GOLDENBERG: Your Honor, this is aimed at helping  
23 us understand whether or not the pills in the particular lot  
24 or batch that were taken by our clients still exist and  
25 whether or not they might be available for testing.

1 THE COURT: Well, why don't you ask them -- why don't  
2 you ask it that way?

3 (Laughter)

4 MS. GOLDENBERG: We can if that would be easier.

5 THE COURT: I mean, you stated it so clearly on the  
6 phone.

7 MS. GOLDENBERG: Sometimes I get it right on my  
8 second try.

9 THE COURT: I think you're entitled to know if  
10 samples of the same exact drugs is limited to the 54  
11 plaintiffs are existing. I mean, both sides probably want to  
12 know that. So if you could phrase the question as clearly,  
13 Ms. Goldenberg, as you just discussed on the record, that  
14 would be great.

15 MS. GOLDENBERG: I would be happy to, Your Honor.

16 MS. WALEKO: And, Your Honor, just two points on this  
17 as well. So question also 8 asks for the date that the  
18 defendants regained possession of the drug and also the  
19 current location. We don't think that those issues are  
20 relevant and they just become, you know, one extra piece of  
21 information that we would be required to answer over and over  
22 through each Defendant Fact Sheet.

23 And second, I did want to note that the API  
24 Manufacturer Defendant Fact Sheet asks this question about the  
25 API and finished dose affected drugs, and so that language I

1 think needs to be corrected on that fact sheet.

2 THE COURT: You mean as opposed to just the 54  
3 plaintiffs?

4 MS. WALEKO: No, we asked the API manufacturers  
5 whether any finished dose drugs were returned to them, and I  
6 don't think that makes sense to ask the API manufacturers --  
7 makes sense to ask that of the finished dose manufacturers.

8 THE COURT: As opposed -- okay. You think it's the  
9 question that the finished dose people have to answer and not  
10 the API people?

11 MS. GOLDENBERG: I think it ends up as to the  
12 finished dose.

13 Alex, you can correct me if I'm wrong, but I think  
14 what you're saying here is the API should only have to answer  
15 if API was referring to the finished dose manufacturer should  
16 only have to answer if they refused the finished dose product  
17 back?

18 MS. WALEKO: Correct. Thank you, Ms. Goldenberg.

19 THE COURT: I agree with that. I don't think the API  
20 people should have to answer if something went to the finished  
21 dose manufacturing people. The finished dose people are going  
22 to answer that question.

23 MS. GOLDENBERG: Certainly we only want each  
24 manufacturer to have to answer about what they have in their  
25 own possession. We aren't sure if there might be a customer

1 who would have returned a finished dose product to an API  
2 manufacturer, and so that's the reason that was in there.

3 THE COURT: All right. So, I think the clarification  
4 that the defendants wanted, each group is going to answer just  
5 as to their own group, right?

6 MS. GOLDENBERG: Yes, each group would answer as to  
7 what's in their possession, right.

8 THE COURT: Right.

9 Any other dispute we haven't ruled on?

10 MS. GOLDENBERG: Your Honor, I think it was just what  
11 Ms. Waleko got up and said, the return --

12 (Court reporter asks counsel to repeat.)

13 MS. GOLDENBERG: I apologize, this is Marlene  
14 Goldenberg again.

15 The only issue that we hadn't gotten a ruling on yet  
16 was whether or not the defendants had to provide information  
17 about the dates that they got their API back, and to me, this  
18 just seems like basic chain of custody information, but I  
19 would think it would be tracked in every case, and so that's  
20 the reason that we had asked for that information as well.

21 THE COURT: Agreed. It should be relatively easy to  
22 obtain if the first question is answered whether you have it.  
23 It's certainly easy to obtain when they gathered and where it  
24 is. So that has to be provided.

25 Any other questions or issues regarding Exhibit E?



1 MS. WALEKO: Yes, Your Honor. The next issue is  
2 actually reflected in the redline to Question G. Starts about  
3 how to answer only if plaintiffs answer yes. The question --

4 THE COURT: Yes, I understand this question. Here's  
5 how I think it should be dealt with. I'm looking for the  
6 easiest way out. The plaintiffs should speak to their clients  
7 and ask them if they've been in contact with any other  
8 defendant, and if the answer is yes, the plaintiffs should  
9 identify those individuals for the defendants and the  
10 defendants should search for the information they have  
11 regarding those contacts.

12 I think that makes so much more sense than having the  
13 defendant search 54 people when it would be so much easier for  
14 the plaintiffs to identify which of the 54 the defendants have  
15 to search for information.

16 So what I'm saying is, Plaintiffs, the burden is on  
17 you in good faith to talk to your clients. If they answer  
18 yes, that they've been in contact with any of the defendants  
19 regarding the recall, et cetera, give those names to the  
20 defendants and then the defendants have to search for the  
21 responsive information regarding that contact. I think that's  
22 a fair compromise on this issue.

23 Any objection, Defendants?

24 MS. GOLDENBERG: No, Your Honor. That's the position  
25 we were advocating for and that's what Question III.B.7 in the

1 Plaintiffs' Fact Sheet asks the plaintiffs whether they have  
2 ever contacted any of these defendants. So that's what that  
3 language was designed to capture and I think Your Honor --

4 THE COURT: Okay. I'm sorry, is that already in the  
5 Plaintiffs' Fact Sheets?

6 MS. GOLDENBERG: That question is in the Plaintiffs'  
7 Fact Sheets.

8 THE COURT: Oh, great. So then it's simple, you get  
9 a positive answer to that question because the answer is going  
10 to be under oath, the defendant should then search for those  
11 particular plaintiffs which, at best, is a subset of 54. Hard  
12 to believe that all 54 contacted the defendants, maybe a  
13 handful did, but if so, they did under oath then. It seems  
14 reasonable to require the defendants to track down those  
15 communications.

16 MS. GOLDENBERG: Your Honor, I think from the  
17 plaintiffs' perspective, if I could just tell you why we care  
18 about this. What we're trying to avoid is, you know -- or we  
19 want to make sure that -- ideally, before trial, we want to  
20 make sure we have an understanding of what information the  
21 defendants have on our clients, and sometimes contacts can go  
22 one way from the manufacturer to our clients in the form of  
23 letters. I've had clients send me letters that they've gotten  
24 from the manufacturer where the manufacturer has requested  
25 that they send the pills back or that there are some kind of

1 offers to, you know, and that come with forms that they want  
2 to sign where this might waive their legal rights if they send  
3 their pills back and get a certain amount of money from the  
4 manufacturer.

5 To the extent the defendants have tried to reach out  
6 to our clients and that's, you know, a one-way communication,  
7 I think that we're entitled to any information that they have  
8 concerning our clients or any attempts they've made to get in  
9 touch with them, and that's the reason that we had pushed back  
10 on this question.

11 THE COURT: Well, I agree that if the defendants  
12 reached out to the plaintiffs, you need to get those  
13 communications, but, in the first instance, the plaintiffs  
14 should check with their clients whether that, in fact,  
15 occurred, because this way, the defendants don't have to  
16 search 54 people when they may not all be relevant to your  
17 question.

18 If the plaintiffs have a client who says, yeah, I  
19 remember getting communications or a form letter from the  
20 defense, from somebody, but I really can't say who it was or  
21 when, then the defendants would have to search.

22 But if the plaintiffs say, no, I never received any  
23 communication, why should the defendants then search for that  
24 particular person.

25 MS. WALEKO: Your Honor, this is Alex Waleko again.

1 I think that's correct. And one other thing I'd like to point  
2 out is, one of the finalized document requests does require  
3 the manufacturers to produce all communications that they sent  
4 to any consumers in the United States. And so -- this  
5 particular question, too, seems like something that plaintiffs  
6 are actually better equipped to look at those documents and  
7 determine whether, you know, it's their name or their address  
8 in any of those communications.

9 MS. GOLDENBERG: Yeah, I mean, there has been  
10 instances where if a defendant has an address wrong for a  
11 plaintiff, or they have an e-mail address wrong, they might  
12 have served that communication and our client might not have  
13 gotten it.

14 What I don't want to have happen is we get to trial  
15 and the defendants raise something, like, well, we tried to  
16 reach out and tell them that maybe they should stop taking  
17 those drugs and the communication never made it to our client  
18 and we've never gotten that document because our client didn't  
19 know it was supposed to reach them.

20 THE COURT: The Court ruled on this issue. We're in  
21 speculation territory now, Plaintiff. If your client  
22 represents that they received a communication from the  
23 defendant that they don't have a copy or can't track it down,  
24 the defendant has to search for that, and if there's a  
25 particular plaintiff who answers in their fact sheet that,

1 yes, they were contacted by the defendant or, yes, they  
2 communicated with the defendant on their own, then the  
3 defendant has to search for the communication.

4 But the burden in the first instance is on the  
5 plaintiff to identify those particular plaintiffs who had  
6 communications.

7 Next issue, are there any?

8 MS. WALEKO: There are more, Your Honor. The next  
9 issue is the comment bubble that's all the way at the bottom  
10 of this Page 8. Search for personal injury cases. This is  
11 the question about alternate causes.

12 THE COURT: Are you on Exhibit E?

13 MS. WALEKO: Still on Exhibit E.

14 Oh, I'm sorry, Page 3. I was looking at the wrong  
15 page number.

16 THE COURT: Okay. Where should I be looking for this  
17 particular question? Oh, here it is. I have it.

18 MS. WALEKO: This is the question to defendants to  
19 identify alternate causes and this question is just --

20 THE COURT: Doesn't this have to be provided in your  
21 defendants' expert report?

22 MS. WALEKO: Yes, our position is that it's premature  
23 to answer -- to see the Defendant Fact Sheet and that should  
24 be answered and provided at the same time as the expert  
25 report. So we would --

1 (Cross talk.)

2 THE COURT: Objection sustained. The question is  
3 deleted.

4 Next issue.

5 MS. WALEKO: The next issue is that same comment  
6 bubble, you'll see it starts with the header "Documents."

7 THE COURT: "We get these," blah, blah, blah.

8 MS. WALEKO: And actually, unfortunately, the bubble  
9 got cut off because it was -- I think it's because it was too  
10 long, but there were four or five document requests at the end  
11 of the fact sheet and defendants, all of them, are covered by,  
12 you know, the very fulsome document requests that the Court  
13 has already finalized regarding the manufacturers, and so our  
14 position is that we should not be --

15 (Cross talk.)

16 THE COURT: This is Judge Schneider. Objection  
17 sustained. I think we already went through the document  
18 request long ago. It was fulsome, extensive. It's hard to  
19 conceive that there are documents that are included with this  
20 fact sheet draft that haven't already been requested, so  
21 objection sustained.

22 Does that take care of Exhibit E?

23 MS. WALEKO: Yes, Your Honor, that takes care of  
24 Exhibit E other than the time to respond which you were going  
25 to return to.

1 THE COURT: Okay. Let's talk about that.

2 Plaintiffs, what say you?

3 MS. GOLDENBERG: I'm sorry, on Exhibit E, Your Honor?

4 THE COURT: Yes. The fact -- when do the defendants  
5 have to answer the fact sheet? What's plaintiffs' position?

6 MS. GOLDENBERG: So, we had originally proposed 30  
7 days, defendants proposed 90. We had offered to compromise at  
8 45, but they're holding at 90. The problem with the 90-day  
9 turnaround, Your Honor, is that we're looking at three  
10 different 90-day periods that each of the defendants was  
11 awarded this amount of time to answer, and then we're going to  
12 be looking at nine months before any single plaintiff has a  
13 completed Defendant Fact Sheet, and that just seems like too  
14 long, especially since we were to crystallize the issues today  
15 on the phone call and simplify what the defendants have to  
16 provide. I think that 45 days for each level of this is more  
17 than sufficient time.

18 THE COURT: Is it envisioned, Ms. Goldenberg, that  
19 the retailers are going to answer within 45 days and then 45  
20 days after that, the next group, and 45 days after that, the  
21 next group. Is that what you envision?

22 MS. GOLDENBERG: We have -- and someone can correct  
23 me if I'm wrong, but my understanding is that the retailers  
24 and the wholesalers are supposed to answer together at the  
25 same time followed by the finished dose manufacturers, 45 or

1 90 days later, followed by the API manufacturers, 45 or 90  
2 days after that. So it's a three-tier process.

3 THE COURT: Okay. Retailers, wholesalers first, then  
4 the finished dose manufacturers, then the API manufacturers?

5 MS. GOLDENBERG: Correct.

6 THE COURT: Okay. What is the trigger for the 45  
7 days? Let's talk -- suggest 45 days. Let's talk about an  
8 exact date. What do plaintiffs propose?

9 MS. GOLDENBERG: So plaintiffs propose -- so the  
10 triggering event, to answer your first question, is the  
11 completed Plaintiff Fact Sheet by the plaintiffs. So the  
12 plaintiffs serves the Plaintiff Fact Sheet, it goes to all the  
13 defendants and that starts the clock on the first tier of the  
14 Defendant Fact Sheet for the wholesalers and pharmacies. So  
15 that would be -- let's start with --

16 THE COURT: So it would be 45 days from -- this will  
17 be attached to a Court order approving the fact sheet, right?

18 MS. GOLDENBERG: Correct.

19 THE COURT: Okay. So let's hear defendants'  
20 position.

21 MS. WALEKO: Sure, Your Honor. Our position is that  
22 this type of granular and very detailed information is going  
23 to be quite difficult for the defendants to collect and  
24 provide, and so that's the reason that we're asking for 90  
25 days. And again, it's important to remember that even though



1 that there's 54 plaintiffs, we really have to do this product  
2 ID exercise and now also identify additional documents  
3 multiple times for each of those 54 plaintiffs and so that  
4 will be a time-consuming process.

5 And because the trigger date will be first the  
6 completion of the Plaintiff Fact Sheet and that, you know, for  
7 each supply chain level, the completion of the Defendant Fact  
8 Sheet for the preceding supply chain defendant, what's going  
9 to end up happening is that likely most if not all of these  
10 Defendant Fact Sheets will have to be answered at one time  
11 because we are so much farther ahead with the Plaintiff Fact  
12 Sheets right now.

13 And so the defendants are looking at a situation in  
14 which they're asked to provide this detailed information for,  
15 you know, each of the 25 -- out of the pills that each of the  
16 54 plaintiffs received more or less at the same time, and  
17 that's obviously going to be an incredibly time-consuming  
18 process and so 90 days really is necessary.

19 And I would also add that I actually think -- I've  
20 been on all of the meet and confers, I don't think plaintiffs  
21 ever actually proposed to us 30 days. Until about two weeks  
22 ago, the dispute was between 60 days and 90 days and then the  
23 plaintiffs recently changed it to 45 days.

24 And I will also mention that the defendants actually  
25 in Benicar, the timed response to that fact sheet was 60 days

1 and that was a much less complicated fact sheet, because it  
2 really just asked for, you know, dear doctor letters and  
3 communications with the plaintiffs' physicians because that  
4 was a branded drug at issue.

5 And so here we have a fact sheet that it's much more  
6 complicated and that will require a lot more time and energy  
7 for the defendants to answer, and so to give us 90 days is  
8 reasonable and, frankly, necessary.

9 THE COURT: I have a question for you, Defendant.  
10 With regard to the information that the plaintiffs  
11 have to provide in the first instance, hasn't that  
12 information, for the most part, already been provided?

13 MS. WALEKO: I'm sorry, I couldn't hear Your Honor.  
14 Could you repeat that, please?

15 THE COURT: Yeah. I agree with you, there's some  
16 background noise. Whoever is not speaking, could you please  
17 put your phone on mute and that would help the court reporter  
18 and all of us.

19 But, Defendants, with regards -- the 54 plaintiffs in  
20 the first instance, they had to produce all their product ID  
21 information, right?

22 MS. GOLDENBERG: Correct.

23 THE COURT: For the most part, hasn't that already  
24 been done?

25 MS. GOLDENBERG: I believe that's been done through

1 the Plaintiff Fact Sheet where they're required to attach  
2 pharmacy records and photos of any bottles or labels that they  
3 have in their possession.

4 THE COURT: The Court will give 60 days from the date  
5 of the Court order approving the fact sheet to respond to the  
6 fact sheet.

7 I agree with you, that this is a more complicated  
8 situation than Benicar, no question about it, but on the other  
9 hand, I don't have the exact dates in front of me. But in  
10 Benicar, it just seems like the whole procedure went along so  
11 much smoother that it didn't take as long as it took to  
12 finalize the fact sheet.

13 Defendants have been on notice for quite some time  
14 about the general nature of the information that they're going  
15 to have to produce. They should have already produced it. We  
16 have granted the defendants' and plaintiffs' concessions on  
17 timing and I just think it's time that we try and bring this  
18 all together. You've been before this Court before.

19 If there's good cause when we get to 60 days for a  
20 particular extension, you can make your application. If we  
21 start with 90 days, it will push out to 150 days or 120 days.  
22 So I think 60 days is a fair compromise. Even with that, it's  
23 still going to take, at best, six months to get all this  
24 information. So 60 days it is.

25 MS. JOHNSTON: Your Honor, this is Sarah Johnston for

1 the retailer defendants. Can I just ask for a clarification?

2 THE COURT: Yes.

3 MS. JOHNSTON: So the -- as Your Honor knows, the  
4 discovery process for the downstream defendant is trailing  
5 that of the manufacturer defendant than we are. We've been in  
6 the process of negotiating the macro discovery issues and the  
7 Rule 34 requests which have been teed up till the end of June,  
8 that it is our understanding that plaintiffs had tabled the  
9 discussion of the DFS for the retailer defendants until after  
10 the Rule 34 macro discovery issues have been decided.

11 So we -- I believe, since our last decisions on that  
12 DFS, which was back in March and have not received revisions  
13 back, with the understanding that the issue of tables already  
14 worked on Rule 34 issues.

15 So I understand and I recognize Your Honor's rule  
16 regarding 60 days for completion of the fact sheets that are  
17 currently under discussion, but I think it may have been  
18 premature to determine the length of time that it's going to  
19 take to respond to the fact sheets that is -- it's still very  
20 much in draft form, at least for the retailer defendants.

21 THE COURT: Okay. So let's make sure this is clear  
22 on the record. Is it agreed with the plaintiff that the  
23 retailer/wholesaler fact sheets, whenever they're finalized,  
24 in the first instance are going to be produced first and then  
25 after that, then the finished dose manufacturers go, and then

1 after that, the API manufacturers have to answer.

2 Is there general agreement on that?

3 MS. JOHNSTON: Yes, Your Honor.

4 MR. GEOPPINGER: Your Honor, Jeff Geoppinger for the  
5 wholesaler defendants. Generally speaking, that sounds  
6 agreeable other than Ms. Johnston pointed out the downstream  
7 defendants don't have a fact sheet to be looking at at the  
8 moment. But in the order of things, that seems certainly the  
9 reasonable way to go.

10 Obviously, the content of that fact sheet may affect  
11 that, assuming there's not something that we would actually  
12 have to have from somebody upstream to answer the questions  
13 they have. But if that's the order of proceedings and the  
14 fact sheet matches with it, that seems like the reasonable way  
15 to go.

16 THE COURT: All right. There's general agreement on  
17 that.

18 And then we have to decide the macro issues for the  
19 downstream parties, which if things go according to plan,  
20 we're going to finalize those at the end of June, and is it  
21 correct that the retailer/wholesaler fact sheets will not be  
22 finalized at least until after the, quote unquote, macro  
23 issues are resolved?

24 MS. JOHNSTON: This is Sarah Johnston, Your Honor.  
25 Yes, that's correct.

1 THE COURT: Okay. So what is wrong with saying that  
2 whenever the retailer/wholesaler fact sheets are finalized and  
3 the Court enters the order approving that, they have to be  
4 answered. What's wrong with that? What am I missing?

5 MR. GEOPPINGER: Your Honor, Jeff Geoppinger for the  
6 wholesalers. And just, Your Honor, the only caveat to that is  
7 obviously we're going to bring it, your suggestion of 60 days  
8 which seems like enough time, but I just mention that we're  
9 saying that in the abstract because we don't know exactly  
10 what's in that fact sheet yet. But certainly, once the fact  
11 sheet is entered, we will be certain at some point it needs to  
12 be answered in 60 days seems, in the abstract, like enough  
13 time, but again, that will all depend on what's actually in  
14 that fact sheet.

15 So I would only say from our perspective and  
16 Ms. Johnston may have more to add on this, but that we would  
17 like to, you know, reserve our right on that date -- or that  
18 time period, depending upon what the fact sheet ultimately  
19 looks like.

20 THE COURT: The order is going to say 60 days.  
21 Next issue.

22 MS. WALEKO: Your Honor, this is Alex Waleko again  
23 and I just -- this might have been just covered but I wanted  
24 to clarify to make sure we're on the same page because it is  
25 important. I just wanted to clarify that the trigger for the

1 60-day deadline for the manufacturers -- for the finished dose  
2 manufacturers will be the completion of the -- for the -- you  
3 know, the completion of the wholesaler and retailers' response  
4 to their fact sheet, not the entry of the Court's order  
5 finalizing the Manufacturer Fact Sheet.

6 THE COURT: You are correct, Counsel.

7 MS. WALEKO: Okay, thank you.

8 THE COURT: If there is a consensus that we're going  
9 to go in this order, but that's the fact sheet, that's  
10 different than the document production.

11 MS. WALEKO: Correct. Okay. Thank you, Your Honor.

12 THE COURT: Okay. So your client has all the time in  
13 the world now to get themselves in order about how to search  
14 for these documents and where to look, et cetera, et cetera,  
15 and they're going to have months and months to do this, so the  
16 Court will be hard-pressed to understand how the fact sheets  
17 can't be answered within 60 days of the trigger date, given  
18 that it has months and months and months before that date has  
19 been triggered.

20 So why don't we go to the next issue, and if I'm  
21 correct, are we now up to Page 8 of Mr. Slater's letter  
22 regarding the sales and pricing information?

23 MS. WALEKO: Your Honor, this is Alex Waleko again.  
24 I'm sorry to bring us back to the fact sheet, but there is one  
25 unique question to the API fact sheet, which is Exhibit D, not

1 Exhibit E. And understanding the Court's -- well, it is  
2 Page 2 of Exhibit E.

3 THE COURT: Got it.

4 MS. WALEKO: And it's the fourth comment bubble down  
5 that says: "For each affected API, identify whether any  
6 solvent used was" --

7 THE COURT: Yes.

8 MS. WALEKO: This is again a question that is -- I  
9 think it is uniquely burdensome among all of the questions  
10 that have been asked in the Defendant Fact Sheet. So we --  
11 you know, the defendants -- the manufacturers object to this  
12 question on the same basis that they had objected to --

13 THE COURT: Why is it burdensome, Counsel?

14 MS. WALEKO: Well, as it's currently written, it's  
15 asking about any solvents and there are -- each manufacturer  
16 uses a different set of solvents but there are multiple  
17 solvents, not all of which are particularly relevant to the  
18 issue, and also, this type of information is actually, at  
19 least from my understanding of my own client's records, is not  
20 kept in one document. So this will actually require the  
21 defendant to go through manufacturer records that are quite  
22 long and complicated to identify the supplier of the  
23 particular solvent used in that batch of API.

24 Because the way this works is that the drug master  
25 file actually discloses the names of the solvents, you know,



1 their chemical names, and then the approved suppliers of those  
2 solvents, but then identifying the particular solvent -- the  
3 particular solvent -- the supplier for the solvent used on any  
4 given day is not something that's retrievable by the push of  
5 the button. It's actually quite difficult based on the way  
6 that these records are kept.

7 THE COURT: Hold on, Counsel.

8 Am I correct, Plaintiff, by reading your letter, that  
9 you have offered to compromise and only list the solvents that  
10 would be relevant to the contamination we're talking about in  
11 this case? Am I correct about that, Plaintiffs?

12 MS. GOLDENBERG: Yes, Your Honor.

13 THE COURT: Okay. So the defendants' objection is  
14 overruled with the proviso that plaintiffs are going to  
15 sharpen their pencils and identify the particular solvents at  
16 issue as represented in their letter. Okay?

17 Does that take care of Exhibit E?

18 MS. WALEKO: Yes, and we're definitely finished with  
19 the fact sheet, Your Honor, thank you.

20 THE COURT: Oh, great. Thank you, Counsel.

21 The sales and pricing documents. Can I give you my  
22 general thoughts on that. It seems to me that this is a very,  
23 very important issue to the case and I want to make sure the  
24 Court has its arms around this issue and gives it sufficient  
25 time.

1 I need some time to digest this information and I  
2 would suggest that we just have a separate call, just about  
3 this one particular issue and only with the parties who the  
4 issue concerns, and I'd like to proposes a date maybe next  
5 week to give the parties additional time to meet and confer  
6 about the sales and pricing information. I think it would be  
7 productive to give you more time to meet and confer and to  
8 have a call just on this one issue because I can see how  
9 important it is to the case.

10 I suspect we don't have any objection to that?

11 MR. GOLDBERG: No objection from defendants, Your  
12 Honor.

13 THE COURT: Okay. With regard to the people who are  
14 at issue with regard to the sales and pricing information,  
15 would it be possible to have a call next Wednesday, June 3rd,  
16 at 4:00 p.m.?

17 (Cross talk.)

18 MR. SLATER: -- on the plaintiff's side. Everyone  
19 else?

20 MR. TRISCHLER: My apologies, Your Honor. Clem  
21 Trischler for Mylan Pharmaceuticals. I have depositions  
22 actually in Minneapolis set that day. Would it be possible to  
23 do it at 4:30, and there's a reasonable chance I'll be  
24 concluded by then?

25 THE COURT: I have no objection. Anyone else?

1 MR. GOLDBERG: That works for ZHP.

2 THE COURT: Okay. 4:30 on June 3rd. Just one issue,  
3 the sales and pricing deficiency issue, only with the parties  
4 who need to be involved in that discussion. I was giving some  
5 thought to whether we should have individual calls, but it  
6 seems to me that some of the issues overlap, so it might be --  
7 it is more productive, I think, to have all the interested  
8 parties on the same call, okay? So we'll deal with the sales  
9 and pricing information next Wednesday.

10 If there's any -- if you meet and confer over the  
11 next week, if there's any additional information you think the  
12 Court should see before that call, feel free to send it along.  
13 I'm going to make sure that I'm up to speed on the issue and  
14 give you -- can give it appropriate thought and consideration,  
15 okay?

16 Then we're up to Issue No. 4, the macro issues.  
17 There's not much to discuss there. Because we have the  
18 briefing schedule on the argument, so we can skip over that.

19 Prioritization, I've read the issue. I don't  
20 understand why there's a dispute about this, quite frankly. I  
21 think it makes perfect sense for the plaintiffs to identify  
22 the documents that they're most concerned about. In fact,  
23 that's what the defendants have been asking for, and why is  
24 there a problem prioritizing the production, Defendants?

25 MR. GOLDBERG: Your Honor, this is Seth Goldberg for

1 defendants. I don't think there is a problem. We provided a  
2 letter to plaintiffs on Friday. We invited them to have  
3 individual meet and confers with each of the defendants  
4 because the prioritization is somewhat of an individualized  
5 issue, given that we all maintain our documents in different  
6 ways and some documents may be easier to get at than others  
7 for some defendants and it may be different for others.

8 But we have invited them to have that meet and confer  
9 and we intend to work through with them how to prioritize.  
10 They've expressed their preference and each defendant will  
11 assess that with plaintiffs and hopefully get to the point of  
12 having some agreed upon -- if not agreed-upon prioritization,  
13 at least a sense of how the information will flow out.

14 Keep in mind that the Court ordered back in mid-April  
15 plaintiffs to provide a letter on prioritization and for  
16 defendants to use good faith to produce documents in a  
17 prioritized way. So I don't see that there is a dispute.  
18 There is the need to have the individual meet and confers now.

19 THE COURT: Mr. Goldberg, I have your May 22nd letter  
20 from Ms. Hilton in front of me where you suggest these  
21 individual meet and confers. Well, one, I question  
22 Ms. Hilton's letter was written May 7th, why hasn't this been  
23 done already? And two, I don't see any particular objection  
24 by any particular defendant to what Ms. Hilton proposed. Just  
25 a general, we need to talk about it.

1 MR. GOLDBERG: Yeah, I think you're right, Your  
2 Honor. We don't have a dispute.

3 THE COURT: Tell me what --

4 MR. GOLDBERG: Well, I don't think there is any -- I  
5 think the question is simply, if you look at Mrs. Hilton's  
6 letter, for example, they have set out a priority order,  
7 contracts and agreements, API manufacturing, quality assurance  
8 documents, finished dose manufacturing quality assurance  
9 documents, foreign regulatory documents. Many of these have  
10 already been produced, for example, the foreign regulatory  
11 documents have already been produced.

12 THE COURT: Good, good.

13 MR. GOLDBERG: So I think what we envision, what we  
14 would like to do is go through this prioritization with  
15 plaintiffs on an individual basis to determine if -- for ZHP,  
16 it might be easier to prioritize contracts and agreements  
17 verses quality assurance, but for Torrent, it might be easier  
18 to prioritize quality assurance over contracts and agreements  
19 just because of how the information is kept.

20 And so we have no dispute about the notion of  
21 prioritizing, it's just that -- how each specific defendant  
22 prioritizes needs to be paired to how the information is kept  
23 at that defendant --

24 (Cross talk.)

25 THE COURT: This is Judge Schneider. I'm going to

1 make it easy. The Court's going to order that the priority --  
2 that the defendants have to exercise reasonable good faith  
3 efforts to prioritize their production in accordance with  
4 Ms. Hilton's letter. This issue has been going on for a  
5 couple of weeks. I don't want it to go on for another couple  
6 of weeks. If there's a particular problem, I'm sure you'll  
7 work it out with defendant -- with plaintiff.

8 The Court's order is saying reasonable good faith  
9 efforts have to be expended. Here, plaintiffs did precisely  
10 what the Court ordered them to do. They were very specific  
11 about their priorities. On its face, it appears reasonable,  
12 and it's going to be approved.

13 If you have a particular problem, work it out with  
14 the plaintiff and I expect all parties to be reasonable.

15 Next issue is the plaintiff's leadership structure.  
16 I think we'll discuss that this afternoon on the call at 2. I  
17 don't anticipate any problem.

18 Plaintiff Fact Sheets. Defendants, what do we do  
19 here? I think, if I remember right, there's a 38 or 40-page  
20 list of deficiencies?

21 MS. LOCKARD: Your Honor, this is Victoria Lockard  
22 from Greenberg Traurig. So first of all, there is a -- there  
23 are chart deficiencies. Plaintiffs' team were deficient. We  
24 have met and conferred with the plaintiff.

25 At present, none of these plaintiffs are ripe for a

1 show cause order. We have 36 of them out of, you know, over  
2 250 personal injury plaintiffs. We would like to appear on  
3 initial cause list at the June 26 --

4 (Court reporter asks counsel to repeat.)

5 MS. LOCKARD: 250 personal injury plaintiffs. We  
6 currently have 36 that would be like next month -- and I'm not  
7 on speaker, but let me know if there's a problem.

8 So we had our meet and confer. I believe there are  
9 two key issues yet to be resolved by the Court today that  
10 allow us to further narrow down --

11 (Court reporter asks counsel to repeat.)

12 MS. LOCKARD: There are two issues that I think the  
13 Court could resolve today that would help us narrow down our  
14 list. In the first you'll note is the authorizations being  
15 provided. Now, keep in mind, Your Honor, we have about 4/5ths  
16 of the Plaintiff Fact Sheets have complied, even though what  
17 we're seeing appears to be a rate exists, by and large, the  
18 majority of plaintiffs have complied now, pretty much made  
19 their complaint, but we have about a fifth of them who we have  
20 identified as sufficient, and we -- the process is working.  
21 We went through our meet and confer, we eliminated some of the  
22 more trivial deficiencies.

23 We agreed, I believe, to alert what would be  
24 considered core deficiencies and we shared that list with  
25 plaintiff's counsel and that really is what's driving the list

1 that you have.

2 But the key issues that you could particularly help  
3 us with us today are the authorizations first and foremost.  
4 In some cases, you have given a blank authorization without  
5 any specification of a provider. They're in the Plaintiff  
6 Fact Sheet and specifically provide that each plaintiff needs  
7 to provide an authorization for each provider and, you know,  
8 this was heavily negotiated, Your Honor, in the call back in  
9 July of last year where you had detailed conversations about  
10 which providers plaintiffs would provide authorizations for.

11 So their position now for those individuals is  
12 appropriate, is directly contradictory to what they said back  
13 in July which was they want a tight control over these  
14 providers, that they want authorizations for just a limited  
15 number, those treating the cancer and those treating the  
16 hypertension and the primary care physician primarily. And  
17 because it was mentioned in that way, then they were talking  
18 about a minimal burden on plaintiff to provide the canceled  
19 authorization. But I --

20 THE COURT: I got it, I got it, I got it.

21 Plaintiff, what say you?

22 MR. NIGH: Your Honor, this is Daniel Nigh. I think  
23 it's classified and characterized -- I don't agree with the  
24 characterization on what has been listed as a core deficiency  
25 in any way, or the number of plaintiffs. I think what we're



1 seeing in terms of the number of plaintiffs that are showing  
2 up right now are just the number of plaintiffs that are,  
3 frankly, would have ripened to this state, because that was  
4 the number of cases on file back then. So if --

5 THE COURT: Could I ask a question, Mr. Nigh?

6 MR. NIGH: Yes.

7 THE COURT: If the defendants had said, for present  
8 purposes, nobody has to be listed on an order to show cause,  
9 so put that aside. Counsel said there's two issues that are  
10 ripe for decision, and from reading the papers, I agree.

11 The first issue, can you speak just to the  
12 authorization issue.

13 MR. NIGH: Absolutely.

14 THE COURT: I think defendants are saying they want  
15 authorization for each individual provider rather than one  
16 generic authorization. They've cited the approved fact sheet  
17 which talks about each provider. So tell me why the Court  
18 should order the plaintiffs to comply with the Court-approved  
19 fact sheets.

20 MR. NIGH: Well, because I'm reading the PFS right  
21 here, and I think what they are saying is they're providing a  
22 blank authorization and signing that authorization and giving  
23 the defendants permission to include which providers they want  
24 to include in that authorization. They're saying that's a  
25 core deficiency, and I disagree, because they have all the

1 information that they have where they could, you know,  
2 depending on which health providers they want to go out and  
3 request information from, they can fill that into that blank  
4 authorization.

5           There is nothing in the authorization sections I'm  
6 reading that suggest that that would be incomplete. It's not.  
7 It gives them every ability to say, you have the ability to  
8 fill in the health care providers that you want to fill in and  
9 they can do that.

10           Now, there are some plaintiff law firms who want to  
11 be a little choosier and direct specifically who the  
12 defendants can request from, and those plaintiff law firms can  
13 have that ability to where they can say, you can only request  
14 from these health care providers and they only provide them  
15 those limited authorizations. But if anything, providing a  
16 blank authorization for them to be able to fill in gives them  
17 even more capability to be able to request the providers that  
18 are listed in the Plaintiff Fact Sheet. So that's not  
19 exactly --

20           THE COURT: Thank you, Mr. Nigh.

21           And on this particular issue, the Court rules in  
22 defendants' favor. It's perfectly reasonable for the  
23 defendants to ask for a specific medical authorization. I  
24 don't know why the plaintiffs wouldn't want that. It gives  
25 them protection. I don't have the fact sheet in front of me,

1 but from the language counsel read, it requires individual  
2 authorizations. So the Court ruling on that particular issue  
3 is that those authorizations have to be provided.

4 Second issue, Counsel?

5 MS. LOCKARD: Second issue is a medical description,  
6 computation and that is on Page --

7 (Court Reporter asks counsel to repeat.)

8 THE COURT: I didn't hear, let me interrupt here,  
9 Counsel. We've gone over --

10 MS. LOCKARD: Go ahead.

11 THE COURT: I ordered the defendants to provide the  
12 specific information that plaintiffs asked for. I'm ordering  
13 the plaintiffs to provide the specific information that the  
14 defendants are asking for. Defendants want a breakdown of a  
15 list of the medical expenses. It's entirely reasonable to  
16 provide that information. It's relevant. Defendants  
17 shouldn't have to dig through and compile their own list, so  
18 defendants' request is granted. They want a summary of the  
19 medical expenses claimed. It has to be provided.

20 I don't mean to take the wind out of your sails,  
21 Counsel, but we've been at this for a while.

22 MR. NIGH: Your Honor, I think there's one additional  
23 issue, though, that's current here in terms of medical  
24 expenses. So a lot of law firms do not order medical expenses  
25 because it's not relevant in a products liability case

1 oftentimes at this stage. So the way that a lot of law firms  
2 are responding to this question is saying, we don't have  
3 medical expenses. That's the answer, you know, at this point.

4 So if they have them, we agree that they can itemize  
5 them and send those to the defendants is the way it's asked  
6 for in the PFS, but to then say that somehow the defendants  
7 have to -- or the plaintiffs have to go out and get those  
8 documents that they don't have, that's not required by the  
9 PFS.

10 THE COURT: Well, let's do this, then. Absolutely,  
11 hundred percent, each of the class representatives has to  
12 summarize and list the medical expenses that they're claiming  
13 in the case. To me, that's a no-brainer.

14 MR. NIGH: I agree.

15 THE COURT: I guess the question is whether that  
16 should be required of every plaintiff in the case at this time  
17 of the case.

18 Defendants, can I hear your position on that? You're  
19 going to get --

20 (Cross talk.)

21 THE COURT: Go ahead.

22 MS. LOCKARD: It's Victoria Lockard, for the record.  
23 Yes, so we believe that every plaintiff or an individual  
24 personal injury plaintiff should have to provide this. It is  
25 significant information. We need it produced, assessments

1 that we're doing for these cases. It's elementary in any  
2 personal injury case. It just has to be provided, such so  
3 that it's part of the Entry 6 initial disclosures, it's the  
4 third item on the list, a computation of any damages being  
5 claimed in the case.

6 So it may be that it's common practice for plaintiffs  
7 in this litigation not to order their records, the daily  
8 records, but just hit the documentation and evidence they need  
9 to prove their case, but it shouldn't be and that's not what  
10 is provided under the federal rules, it's not what was  
11 discussed for this Court in July last year, and it's not what  
12 is provided in the Plaintiff Fact Sheet.

13 We negotiated this, we put in a chart here, we didn't  
14 hear anything back about, you know, at the time plaintiffs  
15 can't provide this information. It's part of the essential  
16 core information they need to prove their case and we're  
17 entitled to it.

18 THE COURT: Can I ask for your indulgence, Counsel.  
19 Are you able, relatively easily, to point me on the docket  
20 where I can look at the fact sheet and a particular relevant  
21 section, whatever those fact sheet says, that has to be done,  
22 we're not going backwards.

23 I'm not in the office, so I don't have the fact sheet  
24 in front of me handy, but can you put your fingers on where in  
25 the docket the Court can look at the fact sheet? Does anyone

1 recall the date that that particular order was entered?

2 MR. STANOCH: ECF 249, filed on 10-3-19, CMO 68,  
3 Approving Plaintiffs' Fact Sheets, Your Honor.

4 THE COURT: Okay. I have it right in front of me.

5 MS. LOCKARD: It should be around Page 17 of where  
6 the explicit listing is.

7 MR. NIGH: And, Your Honor, we spoke on multiple  
8 occasions that this is a request for information, but the  
9 plaintiff doesn't have the information. That doesn't  
10 necessarily -- I mean, they can be asked to request  
11 information but plaintiff doesn't have it. That doesn't  
12 require them to then go and seek out that information to  
13 respond to Plaintiff Fact Sheets. That was never envisioned.

14 THE COURT: Mr. Nigh, I think the law at least with  
15 regard to documents is if documents are in your custody,  
16 control, or possession, and I think it would be hard for a  
17 particular plaintiff to argue that they don't have control  
18 over access to their medical bills.

19 So I'm looking at G on Page 17 now, it says: "Please  
20 list all of your medical expenses," blah, blah, blah, blah,  
21 blah, and it doesn't say only if those bills are in your  
22 possession.

23 I think the defendants are right here, Mr. Nigh, we  
24 negotiated the fact sheets a long time and those fact sheets  
25 require plaintiffs to list their medical expenses, so the

1 Court is going to order they have to be provided. Okay?

2 With regard to the fact sheet, Defendants, we  
3 addressed the two general issues you said you had. Are there  
4 any other issues we need to deal with at the moment on the  
5 fact sheets?

6 MS. LOCKARD: Not at the moment, Your Honor. I think  
7 that should get us a long way along the process.

8 THE COURT: The last issue is the Short Form  
9 Complaint. Let me tell you what my thoughts are about that.

10 With regard to the defendants who have identified all  
11 defendants, superficially, that's unacceptable. I'm going to  
12 order all of those attorneys to be on the phone or in person  
13 -- no, this next get together is June, the middle of June.  
14 I'm going to order those particular attorneys to be on the  
15 phone to explain why they haven't amended their Short Form  
16 Complaints to particularize the defendants they're suing.

17 Defendants, are there any other issues regarding the  
18 Short Form Complaints that we need to deal with?

19 MS. WALEKO: This is Alex Waleko again. No, Your  
20 Honor, it's just these five plaintiffs right now who have  
21 failed to meet the deadline to amend their Complaint, and then  
22 going forward, as additional problematic Short Form Complaints  
23 come in, we have been liaison with plaintiffs' counsel to try  
24 to resolve those informally.

25 So there may be additional cases in the future, but

1 for right now, these are the five that have not been resolved  
2 by their -- a physical deadline.

3 THE COURT: I'm hopeful that between now and the  
4 middle of June when we next get together, these attorneys will  
5 file amended Complaints, particularizing the defendants they  
6 want to sue, but if they don't do it, we'll talk to them and  
7 get some sort of explanation about what's going on.

8 That takes us through Mr. Slater's letter.

9 Are there any issues in defendants' letter that we  
10 haven't addressed? Mr. Goldberg?

11 MR. GOLDBERG: I don't believe so, Your Honor. I'm  
12 just scanning to make sure the agenda is actually the same.

13 THE COURT: I know we reserved on the pricing  
14 information. Again, I just see that as such an important  
15 issue to the case that's going to require us really to dig  
16 deep into the facts and arguments that I think a separate call  
17 on that issue is warranted.

18 So we'll do that next week. So this afternoon, I  
19 know the leadership issue is before Judge Kugler. I suppose  
20 we can talk about any other issue you want to raise with Judge  
21 Kugler, but he's on notice to be available for that call at  
22 2 o'clock.

23 Are there any other issues while we're all together  
24 on this call that we need to address? If you can't think of  
25 any but think of it this afternoon, we can address it this



1 afternoon at 2 o'clock.

2 MR. SLATER: Your Honor, it's Adam Slater. This is a  
3 minor detail with the prioritization as we were moving from  
4 issue to issue. Your Honor ordered with regard to the May 7  
5 letter from Ms. Hilton. I just wanted for the record just to  
6 add in what was in the letter to Your Honor that we had  
7 qualified our request on 8-21 to ensure that we get all of the  
8 testing results from all chromatograms and it states in the  
9 letter, but I just wanted to just place on the record and just  
10 ask that that also confirms our understanding that would come  
11 within your order as well.

12 THE COURT: Thank you for clarifying that,  
13 Mr. Slater. If the May 7 priority letter as clarified and  
14 supplemented by the May 21st letter, right?

15 MR. SLATER: Yes. Thank you, Your Honor.

16 THE COURT: Okay. Good. Next item.

17 Okay. Counsel, I appreciate your time. We'll  
18 reconvene.

19 Hopefully, is the court reporter, are you available  
20 -- oh, no, Carl is going to do that, I think.

21 Okay. There being no further issues, thank everyone  
22 for their time. We're adjourned and we'll talk to you in an  
23 hour. Thank you.

24 (1:00 p.m.)

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I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/S/ Karen Friedlander, CRR, RMR  
Court Reporter/Transcriber

May 29, 2020  
Date

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